

Calaveras Superior Court  
Civil Law & Motion Calendar  
Friday, July 24, 2020  
Hon. David M. Sanders, Courtroom 2

900 AM                      14CV40365                      Defendants' Motion to Quash Deposition Subpoena or    09/19/2014                      11/25/2020    Case Management Conference  
in the Alternative for a Protective Order

Ptff/Pet:    Bachelor, Kathi; Richards, David; Sarkis, Lawrence J.; Von Latta, Chuck  
Def/Res:    Angels Gun Club; etal

Atty:    Berliner Cohen  
Atty:    Porter Scott; Levangie Law Group

Tentative Ruling: On June 11, 2020, defendant Mike Fish filed this motion. On July 13, 2020, plaintiffs filed a Notice of Mootness in response to the motion, expressing they had withdrawn the involved subpoena. On July 15, 2020, defendant Mike Fish filed a formal notice that the subpoena's withdrawal had not been received. Although plaintiffs have expressed that they withdrew the subpoena, they have not provided any formal verification to the Court. Based on the foregoing, defendant Mike Fish's motion is GRANTED.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant Mike Fish to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

9:00 AM                      20CV44570                      Defendant's Motion to Fix Attorney Fees as an Item of    02/13/2020  
Costs Pursuant to CC1717

Ptff/Pet:    Gray, Jim; Gray, Tyler  
Def/Res:    Baxter, Jenny

Atty:    Foley, Kenneth M.  
Atty:    Fluetsch, Michael A.

Tentative Ruling: On February 13, 2020, the complaint was filed. On March 27, 2020, defendant filed a demurrer and the motion to strike; the Court sustained defendant's demurrer without leave to amend but did not address the merits of defendant's motion to strike under CCP §425.16, as the issue was moot. Furthermore, the Court denied defendant's request for attorney's fees, as the request was made pursuant to the motion to strike. Defendant filed this motion on June 12, 2020, requesting \$18,881.25 in attorney's fees.

Code of Civil Procedure section 1032(a)(4) defines defendant as the prevailing party in this matter as a dismissal was entered in defendant's favor. As the prevailing party, defendant is entitled to reasonable attorney's fees pursuant to Civil Code §1717(a) as the underlying promissory note had a prevailing party attorney fee provision. The Court orders plaintiffs to pay defendant the amount of \$1,500, comprised of 5 hours at \$300 an hour (the standard going rate in this community), as reasonable attorney's fees associated with the demurrer. No attorney's fees are awarded for litigation costs associated with the motion to strike as it was denied by the Court. (Therefore, the Court DENIES defendant's motion in part and GRANTS the motion in part.)

The clerk shall provide notice of this ruling to the parties forthwith. Defendant to submit a formal Order pursuant to rule 3.1312 in compliance with this ruling.

Ptff/Pet: Myers, Mitchell; Myers, Susan

Atty: Law Office Of Kenneth M. Foley

Def/Res: Golden State Mortgage Authority; Mckeehan, Brian; Mckeehan, Christine; Paramount Equity Mortgage, Llc

Atty:

Tentative Ruling: Plaintiffs filed the complaint on June 19, 2020. A Temporary Restraining Order was granted on June 23, 2020. The Court granted the temporary restraining order and ordered that defendants could not interfere with plaintiffs' use of the existing well. The defendants could install a fence for livestock that could include the well; but the plaintiffs could install, at their own cost, a cattle gate for a well truck.

In *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70, the Court ruled:

"... trial courts should evaluate two interrelated factors when deciding whether or not to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued." As the court in *IT Corp.* further noted: "The ultimate goal of any test to be used in deciding whether a preliminary injunction should issue is to minimize the harm which an erroneous interim decision may cause. [Citation.]" (Id. at p. 73, 196 Cal.Rptr. 715, 672 P.2d 121, italics added.)

The Court finds plaintiffs are likely to prevail on the merits. The likelihood of the plaintiffs' ultimate success on the merits affects the showing necessary to a balancing-of-hardships analysis. The more likely it is that the plaintiffs will ultimately prevail, the less severe must be the harm plaintiffs allege will occur if the injunction is not issued. (*Integrated Dynamic Solutions, Inc. v VitaVet Labs, Inc.*, (2016) 6 CA5th 1178, 1183.) This is particularly true when the requested injunction maintains, rather than alters, the status quo. (*Take Me Home Rescue v Luri* (2012) 208 CA4th 1342, 1350.)

Second, a consideration of interim harm to plaintiffs include: (1) the inadequacy of other remedies; (2) the degree of irreparable injury the denial of the injunction would cause; and (3) the necessity of preserving the status quo. (Id. at 1350.) Further, the Court must exercise discretion in favor of the party most likely to be injured. The balance of harms dramatically favors granting a preliminary injunction, because alleged harm to plaintiffs by denying an injunction is great and would cause great immediate harm to many persons. (*White v Davis* (2003) 30 C4th 528, 561.)

Overall, plaintiffs have shown sufficient evidence through their pleadings that a preliminary injunction should be granted at this time. A preliminary injunction is necessary to minimize the harm which an erroneous interim decision may cause. Based on the foregoing, and no opposition filed by defendants, plaintiffs' Motion for Order for a Preliminary Injunction is GRANTED.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiffs to prepare a formal order pursuant to Rule 3.1312 in conformity with this ruling.